STATE OF MICHIGAN

COURT OF APPEALS

EDITH MASS,

Plaintiff-Appellant,

v

LINCOLN PARK PLAZA,

Defendant-Appellee.

UNPUBLISHED
February 14, 2006

No. 257951
Wayne Circuit Court
LC No. 03-326100-NO

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This premises liability action arises from an incident where plaintiff tripped on a cement lip in a parking lot and suffered injury. On appeal, plaintiff argues that the trial court improperly barred her suit when it held the cement lip was open and obvious as a matter of law. In the alternative, plaintiff argues that even if the cement lip was open and obvious, special aspects existed that made it unreasonably dangerous. We disagree.

This Court reviews de novo the grant of a motion for summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition, a court must consider the entire record in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Review is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Peña v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

A premises owner owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition render it harmful despite the invitee's knowledge of it. *Id*. Whether a hazardous condition is open and obvious is not dependent on the

characteristics of a particular plaintiff, but rather, on the characteristics of a reasonably prudent person. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004). A condition is open and obvious when it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Arias v Talon Development Group, Inc*, 239 Mich App 265, 268; 608 NW2d 484 (2000).

Here, the cement lip plaintiff tripped on was an open and obvious condition. First, the curb was painted bright yellow, while the top of the island was concrete. Second, plaintiff admitted that "[she] would have seen [the cement lip] if [she] would have looked down." Third, while being deposed, plaintiff circled the cement lip in a photograph. The cement lip was clearly visible in the photograph, which was taken several yards away from the cement lip. An average person of ordinary intelligence would have been watching the ground while stepping down from a cement island in a parking lot and would have noticed the cement lip. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995) (holding public policy dictates people take reasonable precautions for their own safety, and that a reasonably prudent person would observe their steps). Plaintiff had been to the store about ten times before without incident, the day she tripped was sunny, and she admitted that nothing impaired her view when she fell. Therefore, the trial court properly held that the condition was open and obvious.

If special aspects of a condition make an open and obvious risk unreasonably dangerous, the premises owner has a duty to take reasonable precautions to protect invitees from that risk. *Lugo, supra* at 517. If the open and obvious condition has no such special aspects, the condition is not unreasonably dangerous. *Id*. at 517-519. The *Lugo* Court gave two examples of such conditions: (1) an unguarded thirty-foot-deep pit in the middle of the parking lot; and (2) a commercial building with only one exit where the floor was covered with standing water. *Id*. at 518. The goal is to protect against situations that present a substantial risk of death or severe injury, or those that are effectively unavoidable. *Id*. at 519.

Here, the cement lip did not possess any special aspect which would have made it unreasonably dangerous. On appeal, plaintiff asserts that the lip was difficult to perceive; however, she admitted, "I would have seen it if I would have looked down." The magnitude of risk of severe injury presented by the cement lip does not approach the magnitude of risk presented by an unguarded thirty-foot-deep pit. Moreover, plaintiff effectively avoided the condition each of the previous ten times she went to the shopping center and walked either over the island or around it without incident. Plaintiff failed to show that the cement lip had any characteristics of an unreasonable risk that could be considered a special aspect. The trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald